

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board finds the Order of the Administrative Law Judge should remain in full force and effect and the appeal of the respondent should be dismissed.

The Order of the Administrative Law Judge states, in part:

Therefore a neutral physician qualified in orthopedic surgery should be requested to examine and report on claimant's present need for treatment and the apparent origin of his current complaints.

Respondent contends the Administrative Law Judge erred when he referred claimant to Dr. Miskew for an independent medical examination. Respondent also argues claimant failed to prove that his accidental injury arose out of and in the course of his employment with respondent, and that is the basis claimed for the jurisdiction of this appeal to the Board from a preliminary hearing order.

K.S.A. 1999 Supp. 44-551 allows appeals to the Board from "[a]ll final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge"

Review by the Board is limited to "final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto." Carpenter v. National Filter Service, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

The Appeals Board has, on several occasions in the past, visited the question regarding whether an order for an independent medical examination is an interlocutory order or a final order subject to review under K.S.A. 1999 Supp. 44-551.

Generally, a decision or order is final only when it resolves all the issues between the parties and reserves no further questions for future action. However, the Board has, in the past, recognized an exception to this general rule. In Skahan v. Powell, 8 Kan. App. 2d 204, 653 P.2d 1192 (1982), the Kansas Court of Appeals listed three criteria whereby an order may be final even if it does not resolve all issues between the parties. The order may be final if it (1) conclusively determines the disputed question, (2) resolves an important issue completely separate from the merits of the action, and (3) is effectively unreviewable on appeal from a final judgment. An order referring claimant for an independent medical examination does not satisfy these criteria. This Order appointing Dr. Miskew as an independent examining physician is interlocutory in nature and not a final award, and the Board is without jurisdiction to review the Order at this time.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this appeal should be, and is hereby, dismissed, leaving the Order of October 30, 2000, in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of January 2001.

BOARD MEMBER

c: Dennis L. Horner, Kansas City, KS
D'Ambra M. Howard, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director